Department of Environmental Protection

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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environmental Protection

Raised Senate Bill No. 124
AN ACT CONCERNING LONG ISLAND SOUND AND COASTAL PERMITTING

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 124 – AN ACT CONCERNING LONG ISLAND SOUND AND COASTAL PERMITTING. We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, will improve and streamline many of the Department's coastal-related programs.

Section 1
Section 1 of this bill would require that copies of coastal permits for structures, dredging, fill and other regulated activities be filed on municipal land records at the time of permit issuance or prior to a transfer of the property. Although permits for the placement of structures in the tidal, coastal and navigable waters of the State have been required in some form since 1939, there are still a large number of unauthorized structures and activities along the State's coast. As a result, the absence of permits for a dock or seawall is often not discovered until a new owner applies to undertake modifications or maintenance to the structure. At that point, the new owner realizes that he is responsible for bringing the site into compliance, entailing additional trouble and expense and occasionally, the removal of all or part of a structure that is causing environmental impacts or excessive encroachment.

To avoid this situation under current law, a prospective purchaser of coastal property would have to be fully aware of coastal regulatory programs and would need to take the initiative to contact the Department to determine if the site is in compliance.. By requiring permits to be filed prospectively, property owners will protect their investments and new purchasers can readily determine whether or not a coastal property is in compliance with applicable statutes. The recording of permits will also raise awareness among environmental consultants and attorneys, and ultimately, property owners, about the existence and significance of coastal regulatory programs.

Section 4
As the Committee may know, the coastal permit programs, including CGS 22a-32 and 22a-361, have been a focus of the Department's Lean process improvement efforts. This section would create Lean efficiencies and improve coordination among coastal regulatory programs through eliminating a mandatory tidal wetlands hearing deadline that has proven to be unworkable, and

allowing notices of applications to be distributed by electronic means such as fax or e-mail, saving staff time, paper, and money. As with the electronic notice provisions of section 9, the notice of tentative determination would still be required to be published in a newspaper of general circulation.

Section 9

This section would make certain changes to the method by which coastal permit application fees are calculated, changes that were integral to the recommendations of the Lean Project Improvement Team. First, the Department will be authorized to charge an application fee of up to four times the normal amount for structures built without the required permits, or "after-the-fact" permit applications. By creating a consistent disincentive to building coastal structures without permits, the increased application fee would provide a necessary enforcement deterrent without requiring staff and applicants to go through the formal enforcement process as is now often required under the Department's enforcement policy. In many cases, we expect that the additional fee may actually save after-the-fact applicants money as well as time, by obviating the need to enter into a Consent Order with penalty prior to obtaining authorization for unauthorized structures.

In addition, this section would also authorize the Department to set future coastal permit application fees by regulation. One of the efficiencies identified by the Lean Project Improvement Team was to consolidate existing initial, public notice, and area-based permit application fees into one comprehensive fee that is charged at the beginning of the process, a recommendation that would require a statutory change. The Department's intent is to streamline the application process while generating at least the same amount of revenue from a different type of fee schedule, probably based on the type of activity (e.g., residential dock vs. commercial marina or dredging) rather than the water area occupied by the activity as currently specified in statute. Providing the ability to set Structures, Dredging and Fill permit application fees by regulation will allow the Department to proceed with an essential step in permit process improvements.

Finally, this section would streamline the regulatory process by eliminating the statutory requirement for providing notice of coastal permits by certified mail, identified by the Lean Project Improvement Team as a non-value-added step entailing unnecessary expense and paperwork. The Department estimates that approximately 1500 pieces of certified mail, at an average expense of $1.10 each, are mailed annually, at considerable cost in staff time and paper use as well as postage. Notices by e-mail or fax will provide similar or better notice to interested parties, with equal assurance of delivery. The notice of tentative determination would still be required to be published in a newspaper of general circulation.

Section 11

In several instances municipalities, conservation organizations, and private individuals have sought to undertake tidal wetland restoration and other resource conservation activities within the jurisdiction of the Department. However, such private activities can only be authorized under the full CGS §22a-361 permit process, which can often be burdensome and time-consuming, unless the activity can be supervised by Department staff, normally the Wetlands Restoration Unit. Since staffing constraints limit the number of projects that can be actively supervised, the

Department wishes to encourage non-Department resource restoration activities by removing the supervision requirement for eligibility to apply using the streamlined Certificate of Permission process. The Certificate of Permission is issued within 90-days from the date of application, while a full permit application can take up to a year or more to process.

Remaining Sections

The remaining sections of the proposed bill are purely administrative measures that will clean up several obsolete or inconsistent statutory provisions or cross-references, but will not affect the Department's current business practices. Of those, I would highlight the following:

Section 3 will create a - definition of "sewage" that is consistent with the federal Clean Water Act. This change is necessary to ensure that the definition of "No Discharge Zone" under state law is consistent with the waters already designated by the EPA as no discharge areas under federal law. All Connecticut coastal waters have been designated as federally approved no discharge areas.

Section 7 will repeal an obsolete administrative provision of CGS §22a-97(c) which requires the Department to submit an annual report to the Legislature and the Governor on the implementation of the coastal management program. This requirement has now been made redundant by the information provided on the Department's website and other annual reports; therefore, DEP has not submitted any separate reports under 22a-97(c) for many years. At the request of the State Auditors, we propose to eliminate this reporting requirement.

Section 10 will repeal a redundant aquaculture exemption from the coastal permit program statutes. The repealed exemption will leave in place a broader exemption for aquaculture activities from Department permit programs, and will also leave undisturbed existing procedures and protocols worked out between our Department and the Department of Agriculture.

Section 12 will remove unnecessary procedures and guidance for federal coastal management grant funds that are no longer available. In the early days of Connecticut's coastal management program, readily available federal funds were designated by section 22a-112 in part to assist coastal municipalities in meeting their new responsibilities in coastal planning and site plan review under the state Coastal Management Act. Such federal funds are no longer available, and coastal towns have long since incorporated coastal management responsibilities into their ongoing operations.

In addition, Section 12 will remove unnecessary procedures and guidance for an estuarine embayment restoration program, which has not been funded for decades. The last allocation of bond funds under this program was made in 1998, and any future funding would likely necessitate new statutory criteria.

In conclusion, we strongly support Raised Senate Bill No. 124 and thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environment Protection

Raised Senate Bill No. 127 - AN ACT CONCERNING RECYCLING AND SOLID WASTE MANAGEMENT

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 127, AN ACT CONCERNING RECYCLING AND SOLID WASTE MANAGEMENT.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, would make some simple but important changes to assist Connecticut in meeting statewide solid waste goals:

1) Expand the materials that everyone must recycle (#1 & #2 plastics; boxboard; other paper).
2) Streamline reporting requirements for municipalities.
3) Promote infrastructure capacity for recycling of food residuals.
4) Extend the enforcement and auditing authority of the Department under the "Bottle Bill" to the Department of Revenue Services (DRS).

Section 6 - Expand mandated recyclables

By law, everyone must recycle certain items (glass and metal food and beverage containers, corrugated cardboard, newspaper, non-residential white office paper, scrap metal, Nickel-Cadmium rechargeable batteries, waste oil, lead acid batteries (from vehicles), leaves, and grass (clippings should be left on the lawn or, if necessary, composted). This proposal requires the Commissioner, by October 1, 2011 to expand the mandatory recyclables through regulation to include (1) containers of three gallons or less made of polyethylene terephthalate plastic (also known as "PETE" for example, clear plastic bottles) or high-density polyethylene plastic ("HDPE" e.g., milk jugs), (2) boxboard (e.g., cereal box material), and (3) additional types of paper, including magazines and residential high-grade white paper and colored ledger paper. This section advances Strategy 2-2 of the state's Solid Waste Management Plan.

Sections 2-5. - Simplifying Municipal Reporting

This section assists municipalities with their existing data reporting and solid waste management responsibilities by requiring that solid waste collectors summarize and provide information to municipalities and to the Department. Specifically, collectors must report the destination to which they bring solid waste and recyclables, and the tonnages of Connecticut-generated solid waste and recyclables collected in Connecticut and delivered to out-of-state facilities without first passing through a Connecticut permitted solid waste facility or delivered to Connecticut end users (e.g., Connecticut paper mills) without first passing through a Connecticut permitted solid waste facility. The proposed revision requires collectors to report more explicitly to the municipalities in which they collect as well as to the Department. This will allow municipalities

to expend less effort gathering data and reporting data to the Department on the Municipal Annual Recycling Report form. The purpose of such change is to ensure that municipalities are provided with the information they need to identify where the solid waste generated within their borders is being disposed or recycled. This is important to ensure the municipalities are able to perform their statutory obligation to plan and provide for solid waste management. In addition to providing transparency and verification as to the destination of a municipality's waste, having this information provided to municipalities allows municipalities to better minimize their risk of federal liability from waste disposal practices in and outside of Connecticut.

Sections 1, 7, and 8. - Improving Recycling of Commercial Organics

This proposal would apply to the largest volume generators of food residuals: 1) commercial food wholesalers or distributors; 2) industrial food manufacturers or processors; 3) supermarkets; and 4) resorts and conference centers. These sectors account for the majority of the statewide volume of food wastes produced.

Connecticut's Solid Waste Management Plan (Objective 2) has identified food scrap recycling as one of the state's most critical strategies for reaching the state's source reduction and recycling objectives in the coming years to avoid the need for expanded reliance on landfills and resource recovery facilities. This means we will need facilities in which to process and recycle food wastes.

According to the Connecticut 2009 Statewide Solid Waste Composition and Characterization Study[1], food residuals are the single most common potentially recyclable material, by weight, in the current solid waste disposal stream. Food waste accounts for 331,000 tons per year of the state's solid waste stream, or about 13%, with compostable paper, at 8%, being the next most prevalent material.

DEP's Food Residuals Mapping Study identified 1,314 *large-scale* generators of food residuals ranging from supermarkets and resorts to food product distributors. From these generators, a potential of 99,000 – 153,000 tons/yr of food scrap generation was estimated available for recycling (see "Identifying, Quantifying, and Mapping Food Residuals from Connecticut Businesses and Institutions *An Organics Recycling Planning Tool Using GIS,"* September 2001).

Connecticut needs to significantly increase its food residuals recycling capacity such that it provides a network of large-scale processing facilities throughout the state, making it economically feasible for businesses to separate food residuals for recycling vs. disposal. Mandating the recycling of source-separated commercial and organic wastes within a certain time period after establishment of an organics recycling facility in the state would guarantee feedstock (materials) for the new establishment or expansion of existing facilities designed to process food residuals. With an adequate statewide network of food residuals recycling capacity in place, capturing and recycling the food waste segment of the waste stream will improve recycling rates and divert organic materials from landfills and resources recovery facilities.

This approach – of instituting a recycling mandate once processing capacity is available – was used by the state to implement our statewide recycling program and regional processing centers

[1] http://www.ct.gov/dep/cwp/view.asp?a=2718&q=439264&depNav

(see 22a-241b). The approach worked in the past and the Department believes the state would benefit by deploying the approach again.

Creating the necessary infrastructure and diverting food waste from the waste disposal stream is a major strategy (Strategy 2-14) in achieving the state's diversion goal. This diversion goal is also consistent with the Connecticut Climate Change Action Plan (Policy Action #43 Increase Recycling & Source Reduction to 40% specifically, increase composting of source separated organics from commercial, industrial, and institutional generators).

We would like to clarify that our intention in section 8 is to be clear that the requirement to recycle food residuals is dependent on the capacity becoming available within a reasonable distance of the food waste generator. We recommend that line 296 read, "facility, provided that such a facility exists within thirty miles from such wholesaler..."

Bottle Bill

As another method to insure that the solid waste management and recycling objectives are achieved, the Department is offering (as an attachment to this testimony) draft language that would add the Commissioner of Revenue Services as a necessary agency to oversee and enforce the financial and accounting provisions of the "Bottle Bill."

This proposed language would establish the legal authority needed to add the Commissioner of Revenue Services as a person for which the Attorney General can institute an appropriate action or proceeding in Superior to enforce the Bottle Bill. The language also grants legal authority to the Commissioner of Revenue Services: 1) to require appropriate accounting procedures be followed and quarterly reports be filed by entities covered under the Bottle Bill; 2) to examine the accounts and records of entities covered under the Bottle Bill; 3) to assess civil and tax penalties to enforce the Bottle Bill; and 4) to adopt regulations to implement the provisions of section 22a-245a of the general statutes.

The Department requests that these provisions be included to the bill as the Committee considers a favorable report of Senate Bill No. 127.

In summary, the Department supports the bill because it will save money, reduce trash through increased recycling and insure better oversight of important provisions of Connecticut's Bottle Bill.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .

Sec. 501. Subsection (e) of section 22a-245 of the general statutes, as amended by section 19 of public act 2 of the 2009 session, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010, and applicable to calendar quarters beginning on or after said date*):

(e) [(1)] The Commissioner of Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of sections 22a-243 to [22a-245a] 22a-245, inclusive. Such regulations shall include, but not be limited to, provisions for the redemption of beverage containers dispensed through automatic vending machines, the use of vending machines that dispense cash to consumers for redemption of beverage containers, scheduling for redemption by dealers and distributors and for exemptions or modifications to the labeling requirement of section 22a-244.

[(2) The regulations adopted pursuant to subdivision (1) of this subsection shall also include provisions creating a prescribed accounting system for the reimbursement of the refund value for a redeemed beverage container. The commissioner shall adopt written policies and procedures to implement the provisions creating such prescribed accounting system while in the process of adopting such policies and procedures in regulation form, and the commissioner shall print a notice of intention to adopt the regulations in the Connecticut Law Journal not later than twenty days prior to implementing such policies and procedures. The commissioner shall submit final regulations to implement such policies and procedures to the legislative regulation review committee not later than May 1, 2009, unless a later date is approved by a majority vote of the members present of said committee. Policies and procedures implemented pursuant to this subdivision shall be valid until (A) May 1, 2009, or, if applicable, the later date approved by said committee pursuant to this subdivision, or (B) the time that the proposed final regulations are adopted or disapproved by said committee, whichever is earlier.]

Sec. 502. Section 22a-245a of the general statutes, as amended by section 15 of public act 1 of the 2009 session, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010, and applicable to calendar quarters beginning on or after said date*):

(a) Each deposit initiator shall open a special interest-bearing account at a Connecticut branch of a financial institution, as defined in section 45a-557a, to the credit of the deposit initiator. Each deposit initiator shall deposit in such account an amount equal to the refund value established pursuant to subsection (a) of section 22a-244, for each beverage container sold by such deposit initiator. Such deposit shall be made not more than one month after the date such beverage container is sold, provided for any beverage container sold during the period from December 1, 2008, to December 31, 2008, inclusive, such deposit shall be made not later than January 5, 2009. All interest, dividends and returns earned on the special account shall be paid directly into such account. Such moneys shall be kept separate and apart from all other moneys in the

possession of the deposit initiator. The amount required to be deposited under this section, when so deposited, shall be held to be a special fund in trust for the state.

(b) (1) Any reimbursement of the refund value for a redeemed beverage container shall be paid from the deposit initiator's special account, with such payment to be computed under the cash receipts and disbursements method of accounting, as described in subdivision (1) of subsection (c) of Section 446 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended. [Upon the Commissioner of Environmental Protection's adoption of written policies and procedures establishing an accounting system under section 22a-245 of the general statutes, any such reimbursement shall be paid in the manner prescribed in such policies and procedures until the adoption of final regulations under said section 22a-245. Upon the adoption of such regulations, any such reimbursement shall be paid in accordance with such regulations.]

(2) A deposit initiator may petition the Commissioner of Revenue Services for an alternate method of accounting by filing with its return a statement of its objections and of such other proposed method of accounting as it believes proper and equitable under the circumstances, accompanied by supporting details and proofs. The Commissioner of Revenue Services, within a reasonable time thereafter, shall notify the deposit initiator whether the proposed method is accepted as reasonable and equitable and, if so accepted, shall adjust the return, and payment of reimbursement, accordingly.

(c) (1) Each deposit initiator shall submit a report on March 15, 2009, for the period from December 1, 2008, to February 28, 2009, inclusive. Each deposit initiator shall submit a report on July 31, 2009, for the period from March 1, 2009, to June 30, 2009, inclusive, and thereafter shall submit a quarterly report for the immediately preceding calendar quarter one month after the close of such quarter. Each such report shall be submitted to the Commissioner of Environmental Protection, on a form prescribed by the commissioner and with such information as the commissioner deems necessary, including, but not limited to: (1) The balance in the special account at the beginning of the quarter for which the report is prepared; (2) a list of all deposits credited to such account during such quarter, including all refund values paid to the deposit initiator and all interest, dividends or returns received on the account; (3) a list of all withdrawals from such account during such quarter, all service charges and overdraft charges on the account and all payments made pursuant to subsection (d) of this section; and (4) the balance in the account at the close of the quarter for which the report is prepared. The provisions of this subdivision shall not apply to calendar quarters beginning on or after July 1, 2010.

(2) Each deposit initiator shall submit a report on October 31, 2010 for the calendar quarter beginning July 1, 2010. Thereafter each deposit shall submit a quarterly report for the immediately preceding calendar quarter on or before the last day of the month next succeeding the close of such quarter. Each such report shall be submitted to the Commissioner of Revenue Services, on a form prescribed by the commissioner and

with such information as the commissioner deems necessary, including, but not limited to, the following information: the balance in the special account at the beginning of the quarter for which the report is prepared; all deposits credited to such account during such quarter, including all refund values paid to the deposit initiator and all interest, dividends or returns received on the account; all withdrawals from such account during such quarter, including all service charges and overdraft charges on the account and all payments made pursuant to subsection (d) of this section; and the balance in the account at the close of the quarter for which the report is prepared. The quarterly report shall be filed electronically with the Commissioner of Revenue Services, in the manner provided by chapter 228g, regardless of whether the deposit initiator would otherwise have been required to file such report electronically under the provisions of said chapter 228g.

(d) (1) On or before April 30, 2009, each deposit initiator shall pay the balance outstanding in the special account that is attributable to the period from December 1, 2008, to March 31, 2009, inclusive, to the Commissioner of Environmental Protection for deposit in the General Fund. Thereafter the balance outstanding in the special account that is attributable to the immediately preceding calendar quarter shall be paid by the deposit initiator one month after the close of such quarter to the Commissioner of Environmental Protection for deposit in the General Fund. If the amount of the required payment pursuant to this [subsection] subdivision is not paid by the date seven days after the due date, a penalty of ten per cent of the amount due shall be added to the amount due. The amount due shall bear interest at the rate of one and one-half per cent per month or fraction thereof, from the due date. Any such penalty or interest shall not be paid from funds maintained in the special account. The provisions of this subdivision shall not apply to calendar quarters beginning on or after July 1, 2010.

(2) On or before October 31, 2010, each deposit initiator shall pay the balance outstanding in the special account that is attributable to the period from July 1, 2010 to September 30, 2010, inclusive, to the Commissioner of Revenue Services for deposit in the General Fund. Thereafter the balance outstanding in the special account that is attributable to the immediately preceding calendar quarter shall be paid by the deposit initiator on or before the last day of the month next succeeding the close of such quarter to the commissioner for deposit in the General Fund. If the amount of the required payment pursuant to this subdivision is not paid on or before the due date, a penalty of ten per cent of the amount due and unpaid, or fifty dollars, whichever is greater, shall be imposed. The amount due and unpaid shall bear interest at the rate of one per cent per month or fraction thereof, from the due date. Any such penalty or interest shall not be paid from funds maintained in the special account. The required payment shall be made by electronic funds transfer to the commissioner, in the manner provided by chapter 228g, irrespective of whether the deposit initiator would otherwise have been required to make such payment by electronic funds transfer under the provisions of chapter 228g.

(e) If moneys deposited in the special account are insufficient to pay for withdrawals authorized pursuant to subsection (b) of this section, the amount of such deficiency shall be subtracted from the next succeeding payment or payments due pursuant to subsection (d) of this section until the amount of the deficiency has been subtracted in full.

(f) The [State Treasurer may, independently or upon request of the commissioner,] Commissioner of Revenue Services may examine the accounts and records of any deposit initiator maintained under sections 22a-243 to 22a-245, inclusive, of the general statutes or under this section and any related accounts and records, including receipts, disbursements and such other items as the [State Treasurer] commissioner deems appropriate.

(g) The Attorney General may, independently or upon complaint of the [commissioner] Commissioner of Environmental Protection or the Commissioner of Revenue Services, institute any appropriate action or proceeding to enforce any provision of this section or any regulation adopted pursuant to section 22a-245 of the general statutes to implement the provisions of this section.

(h) The provisions of section 12-548, sections 12-550 to 12-554, inclusive, and section 12-555a shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of said sections had been incorporated in full into this section and had expressly referred to the payment required under this section, except to the extent that any provision is inconsistent with a provision in this section. For purposes of section 12-30b, 12-33a, section 12-35a, section 12-39g, and section 12-39h, the payment required under this section shall be treated as a tax.

(i) The Commissioner of Revenue Services may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of this section.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environment Protection

Raised Senate Bill No. 119 - AN ACT CONCERNING REMEDIATION PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 119, AN ACT CONCERNING REMEDIATION PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, allows for use of deed notices by property owners as an additional, simple tool for parties to achieve cleanup endpoints at some of the contaminated sites regulated by the Department. Separately, another section of the bill allows for use of an alternative institutional control at state and federal superfund sites to manage risks, if approved by the Commissioner as protective on a case-by-case basis.

Each contaminated site is unique but our goal is consistent – to minimize impact to human health and the environment and to return the site to productive use. Over thirty years, we have worked with the legislature, business owners and developers on tools that provide a clear path for site cleanup, certainty and timeliness. These tools include the Property Transfer Act, the Remediation Standards Regulations, the Licensed Environmental Professional Program, and the Covenant Not to Sue. The Remediation Standard Regulations present default cleanup standards and a multitude of flexibilities that allow a property owner to tailor the cleanup to the site conditions or the proposed redevelopment. For example, the default cleanup levels are protective of residential uses, but if the site is used for commercial or industrial purposes, the less stringent industrial/commercial cleanup standards can be utilized. While such flexibility provides for cost savings for cleanup, the state must ensure that the use of the site is not changed to include residential uses. Our existing tool that is used to prevent such a change is an Environmental Land Use Restriction (ELUR). An ELUR requires Department approval, requires subordination of mortgages and some easements and is recorded on the land records. While an ELUR is the right tool for many of cleanup situations, simple cleanups call for a simpler tool.

This proposed legislation lists the circumstances where a simpler tool, a Deed Notice, would be appropriate. A Deed Notice would be appropriate when contamination levels are less than 10 times the cleanup standard and the purpose of the Deed Notice is to limit disruption of contaminated material or the purpose of the Deed Notice is consistent with local zoning that prohibits residential use. Deed Notices will be quicker because they could be prepared by the property owner and approved by a Licensed Environmental Professional. They would not

require Department approval, and while they would require notice be issued to each person holding an interest in the land they would not require legal subordinations be obtained from such interest holders. This is a complex topic, and as such will need to have details filled out through regulations. Also, there are a few areas of the bill that should be improved to strengthen the enforceability and practical implementation of Deed Notices as a cleanup tool. The Department would be happy to work with the Committee on such improvements to the language of the bill.

We are also proposing additional flexibility for two specific types of sites: (1) those being cleaned up by the state through our State Superfund Program and (2) those being cleaned up under the Federal Superfund Program. There are 13 State Superfund sites and 18 Federal Superfund sites (with a couple of overlaps). In general, these are the most complicated sites, which often encompass numerous properties with multiple owners and require unique solutions. The proposal provides the Commissioner the ability to approve alternative institutional controls that are protective of human health and the environment.

In summary, the Department strongly supports the bill with the needed improvements referenced above.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environment Protection

Raised House Bill No. 5128 - AN ACT CONCERNING ENVIRONMENTAL CONSERVATION LICENSING

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5128, AN ACT CONCERNING ENVIRONMENTAL CONSERVATION LICENSING. We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, would make critical and necessary revisions to existing assent language to enable the Department to maintain eligibility for approximately $6.5 to $7.0 million per year in federal funds in support of fish and wildlife programs. Minor but necessary statutory changes are also proposed to accommodate the Department's recent implementation of an automated sportsman's licensing system. Finally, this legislative proposal would clarify the ability of the Department to issue "special use" licenses on all properties controlled by the Department.

Section 1

This section proposed to amend CGS 23-11 to clarify the ability of the Department to issue revocable "special use" licenses on all properties controlled by the Department. In addition to forests and parks, the Department controls wildlife management areas, boat ramps and other types of property. The proposed change would clarify that "special use" licenses could also be issued on these types of property. Special use licenses are issued for many types of events, including fundraisers by charitable groups, weddings, road races, scientific studies, and astronomy nights. The DEP carefully evaluates each Special Use request to ensure the use is compatible with the property in question and does not conflict with public uses.

Automated Sportsman Licensing System - Sections 2, 5-14 and 17

Adoption of this portion of the bill will continue the success of the new automated sportsman licensing system. The agent/town clerk/Department business relationships would be simplified by re-categorizing town clerks and retail agents as "agents of the commissioner." Additionally, the town clerks' responsibilities associated with supporting retail agents in their towns would be formally eliminated as the Department now handles all administrative responsibilities.

Specifically, sections 2, 5-14 and 17 of the proposal would make the following changes:

1) Remove the distinction between types of agents authorized by the commissioner to issue certain sportsman licenses, permits, tags and stamps (e.g. town clerk). Instead, this proposal would recognize all such agents as "agents of the commissioner." This change reflects the

ability of the Department's new automated system to allow all "agents" to report their business directly to the Department.

2) Update the fee processing and agent reporting requirements. These proposed changes would accommodate the automated system's ability to directly handle license fee processing, agent fee accountability, and agent reporting schedules established by the commissioner. As a result of these changes, the automated system would be more efficient than the previous paper-based license system.

3) Change the requirements for issuance of deer tags. This proposal would permit the Department to decide whether to issue species tags or not require tagging. This reflects the Department's new ability to more effectively manage such information through online and Interactive Voice Recognition (IVR) based hunter reporting. The IVR operates through a toll-free phone number.

4) Eliminate "duplicate" license requirements for replacement of a lost license. The new automated system makes it unnecessary for the Department to issue "duplicate" licenses. Sportsmen can simply re-print their lost licenses and permits.

Current Benefits of the Automated Sportsman Licensing System

The most significant impact of this new system is the public's improved access to acquiring sportsman's licenses, permits, tags and stamps from a variety of sources including the comfort of their own home via the internet. Additional benefits include: 1) an increased level of efficiency in offering products and services to sportsmen; 2) the implementation of a unique "Conservation ID #" for each sportsman that replaces previous identity information such as social security number; 3) a dramatic increase in sportsman donations to the Department via the internet sales channel; 4) a dramatic increase in sales of the Department's Wildlife magazine; 5) substantial costs savings realized by the State and municipalities through the elimination of manual license handling and reporting; 6) substantial reduction in annual printing and mailing costs incurred by the State by eliminating specialty paper stock; 7) real-time access to sales and harvest information for a more complete data set made available to a broader number of DEP staff, resulting in increased efficiency for several Departmental programs; 8) the ability of the Department to implement additions or changes to sportsman licenses without delays; and 9) the opportunity to support additional Department licensing programs in the future through the existing sales platform.

"Assent Language" - Sections 3-4 and 15-16

Passage of these sections is essential to the operation of the DEP Bureau of Natural Resources. Revision of the current assent language is needed to enable the Department to maintain eligibility for $6.5 to $7.0 million per year in federal funds. As a result of PA 09-111 and PA 09-3 (June special session), the Environmental Conservation Fund was swept and both the existing balance and revenue stream were transferred to the General Fund. Sportsmen license revenue deposited into the defunct Environmental Conservation Fund was used to support our fish and wildlife programs, including our state fish hatchery system. Revenues from the sale of sportsmen licenses, permits, tags and stamps have always been returned to DEP to be used to support fishing, hunting and wildlife programs within BNR. As per federal regulation (50 CFR 80.4), the use of such revenue is restricted to the administration of fish and wildlife programs. All states must comply with this requirement in order to receive federal Sport Fish and Wildlife

Restoration Program funds, and states must enact legislation to prevent license revenues from being diverted to non-fish and wildlife programs.

The Sports Fish Restoration (SFR) and Wildlife Restoration (WR) program are two of the nation's most successful user pay-user benefit programs. These programs receive revenue from a manufacturing excise tax on certain hunting and fishing equipment and related items, which is then apportioned back to the states based on a formula which includes land area and number of paid license holders. Connecticut has received between $5 and $7 million dollars annually that support approximately one-half of our fish and wildlife programs.

The United States Fish & Wildlife Service (USFWS) and Department of the Interior (DOI) staff response to the transfer of fish and wildlife revenues to the state general fund was that it is a potential violation of 50 CFR 80.4 and that CT would likely be declared ineligible to receive SFR and WR funds. This potential violation of 50 CFR 80.4 can be corrected by repealing 26-14 and modifying 26-15 and 26-15a to more clearly require that revenues generated by the sale of fish and wildlife licenses, permits, tags and stamps are used exclusively in support of fish and wildlife programs managed by the Department's Bureau of Natural Resources. General Fund support of fish and wildlife programs has always equaled or exceeded revenues. Additionally, new text is proposed that will clarify requirements for reports that the Department must submit annually to the USFWS to maintain eligibility for federal funds.

The Department requests that the word "estimated" be removed from line 47 of House Bill 5128.

In summary, the Department supports the bill as it would protect fish and wildlife programs by preventing the loss of approximately $6.5 -$7.0 million dollars in annual federal funding for those programs, improve an already successful sportsman's licensing system, and clarify issuance of "special use" licenses for all Department properties.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environment Protection

Raised House Bill No. 5119 - AN ACT CONCERNING MINOR REVISIONS TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND GROUNDWATER POLLUTION ABATEMENT STATUTES

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5119, AN ACT CONCERNING MINOR REVISIONS TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND GROUNDWATER POLLUTION ABATEMENT STATUTES.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, would provide cost savings to the state in two ways. First, this bill would ensure that clean up funds (reimbursements for cleaning up primarily gasoline station sites) are not used by responsible parties just to reimburse the state when the responsible party fails to clean up the site and state had to incur costs performing the cleanup. Second, this bill clarifies the groundwater pollution abatement statute by allowing a homeowner to keep a water filtration unit that was installed by the Department where the unit is no longer needed for its original purpose and where the Department determines it is cost effective for the state to leave the system with the homeowner.

Section 1 of the bill amends the underground storage tank reimbursement program. This program was established in 1989 to satisfy federal financial assurance requirements for underground tank owners and operators. Since its inception, the program has awarded over $190 million to reimburse owners and operators for costs associated with the cleanup of contamination from leaking underground storage tanks. However, the program was never intended to be used by applicants to circumvent the state's cost recovery provisions and avoid their cleanup obligations.

The state incurs costs in such situations when the responsible party fails to act promptly to respond to a release of petroleum. The state has to perform the clean up and then seek cost recovery from the responsible party. Sometimes this requires that the Department to file a lien on the property, a time consuming and expensive undertaking. Thus, the ability to bar recovery of such costs when a responsible party does respond in a timely and appropriate manner to a release would provide applicants seeking reimbursement from the program with greater incentives to properly maintain their underground storage tank (UST) compliance and to promptly address any releases. With the recent reduction of funding for the program, barring such recovery would also preserve funds for applicants that are complying with their obligations to promptly investigate and remediate their release(s).

In addition, this bill minimizes the chance that Department staff will have to spend substantial time and general fund monies to remediate a pollution release, and then spend substantial time to seek recovery of the funds, only to face a claim by a recalcitrant responsible party that general funds in the UST account should be used to pay the state's response costs.

This bill before you today ensures that applicants have an incentive both to maintain UST compliance for preventing releases, and to promptly remediate their UST releases, while preserving funding for applicants that are complying with their obligations. A few, but important, drafting amendments are needed to the bill to clarify that the program will continue to cover cleanup costs at all sites voluntarily reported to the Department. With these amendments, the Department strongly supports this section of the bill.

Section 2 is an amendment to the groundwater pollution abatement statute, and provides an efficient mechanism for the Department to allow a homeowner to keep a filtration system that the Department installed on their drinking water well to filter contaminated drinking water. After the Department determines the filter is no longer needed or no longer subject to state monitoring and maintenance, some homeowners wish to keep the filter. Removal by the Department would incur additional costs to the state with no benefit since the filter units usually cannot be cost-effectively reused at other properties. In such situations, it is more cost-effective for the state to dispose of the filter by allowing the owner to keep it. This bill would allow that.

In summary, the Department strongly supports the bill, with the clarifications referenced in Section 1.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Hearing – February 22, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environment Protection

Raised Senate Bill No. 121 - AN ACT CONCERNING THE EXTENSION OF GENERAL PERMITS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 121, AN ACT CONCERNING THE EXTENSION OF GENERAL PERMITS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, would continue the authorization to conduct an activity covered by a general permit beyond its original expiration date if the Commissioner has issued a public notice of tentative determination of the Department's intent to renew such general permit at least one hundred and eighty days prior to its expiration date, but not yet renewed the general permit before the expiration date is reached.

More than half the environmental activities that the Department regulates through the permitting process are covered by general permits. To date, the Department administers fifty-six different general permits that cover a wide range of activities. Nearly 6,000 active registrants are covered by a general permit. General permits offer efficiency and reduced cost to the regulated community, compared to individual permits. At the same time, the term of a general permit is typically limited to five years, and the Department sometimes has difficulty renewing a general permit before its expiration date.

To renew a permit, Department staff typically must assess current federal and state law, consult with stakeholders, and update the text of the permit accordingly. The staff then provides notice of the Department's intent to renew the permit, and afford the public generally 30 days to comment on the draft permit provisions. In accordance with the Department's Rules of Practice, interested parties may petition for adjudication of the terms of the proposed permit before one of the Agency's Hearing Officers. When adjudication occurs, it can take more than 180 days to renew a permit. Moreover, efforts to encourage input from the public and stakeholders and offer an open and transparent administrative process may lead to lengthy discussions that extend the timeframe required for renewal of a general permit beyond the timeframe originally projected by the Department.

Passage of this bill would provide benefits to the citizens, businesses and industries of Connecticut as well as the Department. Registrants under general permits, mostly Connecticut businesses and industries, would be provided continued legal coverage as opposed to the gap in legal coverage currently created when a general permit expires before it is renewed. This gap

exposes the registrant to third party lawsuits for lack of permit coverage. The only legal recourse currently available to a registrant when a general permit expires is to cease the activity or obtain an individual permit, a process complicated by more comprehensive application procedures and higher fees.

At the same time, this proposal would maintain the Department's ability to enforce the terms and conditions of a general permit that would be lost when a general permit expires. Furthermore, the proposal would only be triggered once the Department makes an effort to timely renew the general permit. Thus, the proposal would encourage the Department to launch the timely reconsideration and renewal of general permits.

Additionally, this proposal would allow eligible businesses and industries to register a new activity under the otherwise expired general permit and the Commissioner to continue to collect registration fees. These fees are far less than that of a comparable individual permit and support the Department's and the State's mission of environmental protection.

Precedent for continuation of general permit coverage beyond a permit's expiration date exists in the Environmental Protection Agency's (EPA) general permit program. EPA's general permits explicitly state that if the permit is not reissued or replaced prior to its expiration date, it will be administratively continued and remain in full force and effect until there is an outcome on such general permit. (For an example see Section 1.3.2 "Continuation of this Permit" on page 9 of EPA's Multi-sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) 9/29/08 at the following link http://www.epa.gov/npdes/pubs/msgp2008_parts1-7.pdf or Section 1.5.2 "Continuation of this Permit" on page 7 of EPA's Vessel General Permit (VGP) 12/19/08 at http://www.epa.gov/npdes/pubs/vessel_vgp_permit.pdf .)

Finally, to further clarify the bill's language, we would suggest a correction in line 10 be made to strike "makes a final decision on the renewal of" and replace with "renews". This will eliminate any ambiguity as to the status of the expired general permit in the event that a final decision is not to renew.

In summary, the Department strongly supports Raised Senate Bill No. 121, AN ACT CONCERNING THE EXTENSION OF GENERAL PERMITS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION for the continued legal coverage it will provide to existing and new registrants, and for the assurance that the Department will be able to enforce the terms and conditions of its general permits which serve to protect human health and the environment.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov .